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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/666,306

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EXAMINER

ROBERTS, BRIAN S

ART UNIT

PAPER NUMBER

2619

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03/17/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/666,306	Applicant(s) SMITH ET AL.	
	Examiner BRIAN ROBERTS	Art Unit 2619	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 December 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-12 and 14-37 is/are pending in the application.
- 4a) Of the above claim(s) 33-37 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-12 and 14-32 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 18 September 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

- The amendment filed 12/17/2007 is acknowledged.
- Official notice taken in the office action mailed dated 11/02/2007 asserting common knowledge in the art is now taken to be admitted prior art because the applicant failed to traverse the examiner's assertion of official notice. See MPEP § 2144.03(c)

Drawings

Figure 1 should be designated by a legend such as --Prior Art-- because only that which is old is illustrated. See MPEP § 608.02(g). Corrected drawings in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the second master distribution switch port and the third mast distribution switch port of claim 1 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Objections

Claims 15-18, and 22 objected to because of the following informalities:

- In claims 15-18, and 22 line 2, "packet containing" should read --a packet containing--.

Appropriate correction is required.

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 31-32 rejected under 35 U.S.C. 101 because is directed to non-statutory subject matter. Claims 31-32 are directed to a “computer program”, which does not constitute statutory subject matter such as a process, machine, article of manufacture or composition of matter. In contrast, a claimed computer-readable medium having instructions is a computer element which defines structural and functional interrelationships between the instructions and the computer to permit the instructions functionality to be realized, and is thus statutory. Examiner suggests changing the claim language to read “A computer-readable storage medium having encoded thereon a plurality of computer-executable instructions...” (Please see pages 30 and 53 of the Interim Guidelines for Examination of Patent Applications for Patent Subject Matter Eligibility). See page 52+ of the Interim Guideline.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-12 and 31-32 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

- In reference to claim 1

In lines 16-17, it is unclear how the slave distribution switch contains a first master distribution switch port configured for communication with the slave chassis over a virtual switch link. It does not make sense for the slave chassis to communicate with itself over a virtual switch link.

- In reference to claim 31-32

It is unclear how a computer program can be encoded with a computer program.

- Claims 2-12 are rejected as they depend on rejected claim 1

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 14, 23-28 and 30-32 are rejected under 35 U.S.C. 102(e) as being anticipated by Shinomiya. (US 2003/0037165)

- In reference to claims 14, 30, 31

In Figure 14, Shinomiya teaches and system and method for forming a virtual switch (3) from a plurality of physical switches in a network, the method includes configuring a first physical switch as a master switch (3-1) for controlling the virtual switch (3); configuring a second physical switch as a slave switch (3-2) under the control of the master switch, wherein the first physical switch (3-1) and the second physical switch (3-2) are redundant backups acting as distribution switches in a network; forming a virtual switch link for communication between the master switch (3-1) and the slave switch (3-2) (as shown in Figure 1 paragraphs [0045-0046]); causing the master switch (3-1) and the slave switch (3-2) to communicate via a virtual router redundant protocol (*virtual switch link protocol*) and causing the master switch (3-1) and the slave switch (3-2) to act as a single virtual switch (3) to a switch hub (2) (*satellite switch*), wherein the virtual switch (3) is configured to receive instructions regarding management of the network from the switch hub (2) (*satellite switch*) via the substitution server (6). (paragraphs [0182-0186])

- In reference to claims 23, 32

In Figure 1, Shinomiya further teaches extending a first data plane of the master switch (3-1) to include a second data plane of the slave switch (3-2) according to communication between the master switch and the slave switch via the virtual router redundant protocol (*virtual switch link protocol*). (paragraphs [0182-0186])

- In reference to claim 24

In Figure 1, Shinomiya further teaches forming the virtual switch link from a plurality of physical links acting as a single logical link. (paragraphs [0182-0186])

- In reference to claim 25

In Figure 2, Shinomiya further teaches the virtual switch link comprises a control virtual switch link and a data virtual switch link. (paragraphs [0182-0186])

- In reference to claim 26

In Figures 9A-9C, Shinomiya further teaches updating layer 2 forwarding tables in the master chassis (3-1); updating layer 2 forwarding tables in the slave chassis (3-2); and correcting inconsistencies between the layer 2 forwarding tables in the master chassis (3-1) and the layer 2 forwarding tables in the slave chassis (3-2). (paragraphs [0090-0096]).

- In reference to claim 27

In Figure 2, Shinomiya further teaches forming the virtual switch link comprises combining the data virtual switch link and the control virtual switch link on a single physical link. (paragraphs [0047-0048])

- In reference to claim 28

In Figures 9A-9C, Shinomiya further teaches updating layer 2 forwarding tables in the master chassis (3-1); updating layer 2 forwarding tables in the slave chassis (3-2);

and correcting inconsistencies between the layer 2 forwarding tables in the master chassis (3-1) and the layer 2 forwarding tables in the slave chassis (3-2) according to frames transmitted on the data virtual switch link. (paragraphs [0090-0096])

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-6, 8-11, 15-22 and 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shinomiya. (US 2003/0037165) in view of Walsh et al. (US 2002/0099972).

- In reference to claim 1, as best understood

In Figure 14, Shinomiya teaches a virtual switch (3) for a network, the virtual switch (3) includes a master chassis (3-1) comprising a first master distribution switch port configured for communication with the slave chassis (3-2) over a virtual switch link (as shown in Figure 1 paragraphs [0045-0046]); a second master distribution switch port configured to receive management instructions from a switch hub (2) (*satellite switch*); and a third master distribution switch port configured to send configuration and management instructions to the network inherently containing core switches; and the slave chassis (3-2) comprising a first master distribution switch port configured for

communication with the slave chassis over a virtual switch link (as shown in Figure 1 paragraphs [0045-0046]); a second master distribution switch port configured to receive management instructions from a switch hub (2) (*satellite switch*); and a third master distribution switch port configured to send configuration and management instructions to the network inherently containing core switches and a virtual switch link for communication between the master chassis (3-1) and the slave chassis (3-2). (paragraphs [0045-0046])

Shinomiya does not explicitly teach that the master chassis (3-1) comprises a first plurality of linecards; and a master supervisor card for controlling the first plurality of linecards and that the slave chassis (3-2) under the control of the master supervisor card comprises a second plurality of linecards; and a slave supervisor card.

In Figure 1, Walsh et al. teaches a router with a first plurality of linecards (108a); and a master supervisor card (102a) for controlling the first plurality of linecards and a second plurality of linecards (108b); and a slave supervisor card (102b). (paragraph [0027])

It would have been obvious to a person of ordinary skill in the art at the time of the invention to modify the master chassis (3-1) of Shinomiya to include a first plurality of linecards; and a master supervisor card for controlling the first plurality of linecards as taught by Walsh et al. and modify the slave chassis (3-2) of Shinomiya to include a second plurality of linecards; and a slave supervisor card as taught by Walsh et al. because it allows each chassis in the virtual switch to receive data over input communication links and forward data over output communication links as well as

change from utilizing the master chassis to the slave chassis in case there was failure of the master chassis.

- In reference to claim 2

The combination of Shinomiya and Walsh et al. teaches a system and method that covers substantially all limitations of the parent claim. In Figure 1, Shinomiya further teaches the master chassis (3-1) and the slave chassis (3-2) communicate according to a virtual router redundant protocol (virtual switch link protocol) for logically extending a data plane of the master chassis (3-1) to that of the slave chassis (3-2). (paragraphs [0045-0046])

- In reference to claim 3

The combination of Shinomiya and Walsh et al. teaches a system and method that covers substantially all limitations of the parent claim. In Figure 2, Shinomiya further teaches the virtual switch link comprises a control virtual switch link and a data virtual switch link. (paragraphs [0047-0048])

- In reference to claim 4

The combination of Shinomiya and Walsh et al. teaches a system and method that covers substantially all limitations of the parent claim. In Figure 2, Shinomiya further teaches the virtual switch link comprises a plurality of physical links combined to form a logical link. (paragraphs [0047-0048])

- In reference to claim 6

The combination of Shinomiya and Walsh et al. teaches a system and method that covers substantially all limitations of the parent claim. In Figures 9A-9C, Shinomiya further teaches the virtual switch link is used to synchronize routing tables (32) of the master chassis (3-1) and the slave chassis (3-2). (paragraphs [0090-0096])

- In reference to claim 8

The combination of Shinomiya and Walsh et al. teaches a system and method that covers substantially all limitations of the parent claim. In Figure 1, Shinomiya further teaches the data virtual switch link extends an internal chassis data plane to communication between the master chassis (3-1) and the slave chassis (3-2). (paragraphs [0045-0046])

- In reference to claim 9

The combination of Shinomiya and Walsh et al. teaches a system and method that covers substantially all limitations of the parent claim. In Figure 1, Shinomiya further teaches the master supervisor communicates with the slave supervisor via inband messaging on the control virtual switch link. (paragraphs [0045-0046])

- In reference to claim 10

The combination of Shinomiya and Walsh et al. teaches a system and method that covers substantially all limitations of the parent claim. In Figure 7, Shinomiya further teaches the control virtual switch link is brought on-line first and is used to determine which chassis will be the master chassis (3-1). (paragraph [0076-0079])

- In reference to claim 11

The combination of Shinomiya and Walsh et al. teaches a system and method that covers substantially all limitations of the parent claim. In Figure 2, Shinomiya further teaches a single physical link combines the control virtual switch link and the data virtual switch link. (paragraphs [0047-0048])

- In reference to claims 5, 15-18, 22, 29

The combination of Shinomiya and Walsh et al. teaches a system and method that covers substantially all limitations of the parent claim.

While the combination of Shinomiya and Walsh et al. does not explicitly teach that the virtual switch link protocol comprises a field indicating whether a packet has traversed the virtual switch link, a source port identifier, a destination port index, source flood information, VLAN information, or data plane priority information, the admitted prior art teaches that the above fields are known in the art and are utilized to coordinate the transfer of packets between network elements and for configuration of the network elements.

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the system and method of the combination of Shinomiya and Walsh et al. to include a field indicating whether a packet has traversed the virtual switch link, a source port identifier, a destination port index, source flood information, or VLAN information in a packet between Router A and Router B because it allows the coordination of load balancing between the respective routers and provides for the routing of packets by a backup router if a master router fails.

- In reference to claims 19-21

The combination of Shinomiya and Walsh et al. teaches a system and method that covers substantially all limitations of the parent claim.

While the combination of Shinomiya and Walsh et al. does not explicitly teach utilizing a virtual switch link protocol to determine whether an access control list should be applied to a frame, whether a QoS designation should be applied to a frame, or whether a frame is a MAC notification frame, the admitted prior art teaches the above fields are known in the art and are utilized to coordinate the transfer of packets between network elements and for configuration of the network elements.

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the system and method of the combination of Shinomiya and Walsh et al. to include utilizing a virtual switch link protocol to determine whether an access control list should be applied to a frame, whether a QoS designation should be applied to a frame, or whether a frame is a MAC notification frame, between Router A and

Router B because it allows the coordination of load balancing between the respective routers and provides for the routing of packets by a backup router if a master router fails.

Claims 7 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shinomiya (US 2003/0037165) in view of Walsh et al. (US 2002/0099972), as applied to the parent claim, and further in view of Kanekar (US 6751191).

- In reference to claims 7 and 12

The combination of Shinomiya and Walsh et al. teaches a system and method that teaches substantially all limitations of the parent claims.

The combination of Shinomiya and Walsh et al. does not teach an internal out of band channel to communicate between the master chassis and the slave chassis or forming the data and control channels through separate physical links.

In Figure 3, Kanekar et al. teaches utilizing a separate control link (208) and data link (214) between a master chassis (202) and a slave chassis (204). (column 5 line 61 - column 6 line 20)

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the system and method of the combination of Shinomiya and Walsh et al. to include utilizing an internal out of band channel to communicate between the master chassis and the slave chassis or forming the data and control channels through separate physical links as taught by Kanekar et al. because it allows data and control

information to be sent over separate links and increase the bandwidth available for transmitting control and data information between the master chassis and slave chassis.

Response to Arguments

Applicant's arguments filed 12/17/2007 have been fully considered but they are not persuasive.

- On pg 9 of the Remarks, the Applicant contends that Shinomiya fails to teach the virtual switch as a distribution switch.
- The Examiner respectfully disagrees. The switch (3) of Shinomiya is used to distribute data between a network and end systems (1), therefore, the switch can broadly be interpreted as a distribution switch.
- On pg 10 of the Remarks, the Applicant contends that Shinomiya fails to teach a virtual switch receiving network management instructions from a satellite switch.
- The Examiner respectfully disagrees. Shinomiya teaches virtual switch (3) receiving management instructions from substitution server (6) via switch hub (2) (*satellite switch*).

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure are:

- 7209435

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to BRIAN ROBERTS whose telephone number is (571)272-3095. The examiner can normally be reached on M-F 10:00-7:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wing Chan can be reached on (571) 272-7493. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 2619

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

BSR
03/03/2008

/Wing F Chan/
Supervisory Patent Examiner, Art Unit 2619
3/6/08